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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,371	08/24/2006	Kenji Sakamoto	1248-0822PUS1	1201
2292 7590 02/23/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER NATNAEL, PAULOS M				
ART UNIT 2622		PAPER NUMBER		
NOTIFICATION DATE 02/23/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/553,371

Applicant(s)

SAKAMOTO, KENJI

Examiner

PAULOS M. NATNAEL

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11-14, 17, 24 and 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-21 is/are allowed.
- 6) ☒ Claim(s) 1-4, 15, 16, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 5-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The response to the Election/Restriction filed 1/15/09 has been received.
Applicants have elected, without traverse, Group 1, claims 1-10,15-16 and 18-23.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim **22** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim **22** defines a program embodying functional descriptive material.

However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims **1-4,15-16,22-23** are rejected under 35 U.S.C. 102(e) as being anticipated by Ishikawa et al. US 2002/0061064.

Considering claim **1**, Ishikawa discloses a video broadcasting equipment image processing equipment and camera device.

a) the claimed reception means for receiving, from the receiver, reception data containing information indicative of a communication condition detected at the receiver...is met by the coding section 15A which receives image information from cameras 10-1 to 10-n, Fig.1;

b) transmission rate setting means for setting a transmission rate of the video data and/or audio data to be transmitted, according to the reception data...is met by communication interfacing section 12 (Fig.1) which sets a transmission rate of the communication path (paragraph [0147]).

Regarding claim **2**, the transmitter according to Claim 1, wherein: the video data and/or audio data to be transmitted has a plurality of content types, and the transmission rate setting means sets the transmission rate of the video data and/or audio data to be transmitted, according to each of the content types....is met by the disclosure that the image information including the dynamic region is transmitted as the train of the codes having a smaller content than the image information including no dynamic region through the communication path. (see, paragraph [0124].

Regarding claims **3 and 4**, the claimed wherein the transmission rate setting means sets a bit rate and/or a maximum number of times of retransmission for each of the content types; and, comprising content identification means for identifying the content type of the video data and/or audio data to be transmitted...is met by the Ishikawa disclosure on paragraph [0016] a processing which determines interframe correlation, background difference, etc, and detects that any object enters a coverage of the camera 60-C and an object previously positioned in this coverage moves or disappears. (See also paragraphs [0017],[0033], [0053]).

As to claim **15**, see rejection of claim 1.

Claim **16** is a method claim of claim 1 and, therefore, claim 16 is rejected for the same reasons as in claim 1.

As to claims **22** and **23** see rejection of claim 1.

Allowable Subject Matter

6. Claims **18-21** are allowed.
7. Claims **5-6** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Deshpande, U.S 7,191,246 discloses a transmission rate selection for network of receivers having heterogeneous reception bandwidth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAULOS M. NATNAEL whose telephone number is (571)272-7354. The examiner can normally be reached on 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAULOS M. NATNAEL/
Primary Examiner, Art Unit 2622

Pmn
February 15, 2009